IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 797 OF 1988

Reshambai wife of Kalu Bachhavu, at present in ordinarily residing at Village Sayane, Taluka Malegaon District Nashik]..Appellant](Ori.Accused No.1)

versus

The State of Maharashtra]..Respondents

None for the Appellant - Original Accused No.1.
Mrs. A. S. Pai, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
V. K. TAHILRAMANI,JJ.
DATE : 8TH MARCH, 2006

ORAL JUDGMENT (PER D. G. DESHPANDE, J.) :

1. The matter was fixed for final hearing today, nobody appeared for the appellant - accused, and, therefore in view of the Judgment of the Supreme Court reported in **1996 Cri. L.J. 3491 Bani Singh and others vs. State of U.P.,** we heard the learned APP for the State, and, we are deciding this appeal, from the facts of the case.

2. Accused is a mother in law of the deceased. Name of the deceased was Chitrabai alias Babybai. The accused is convicted under Section 302 of the IPC and sentenced imprisonment for life. Other three accused who were tried with her, were acquitted by the Vth Additional Sessions Judge, Nasik, by his Judgment dated 1.9.1988.

3. The case of the prosecution was that deceased Babybai was residing with her mother in the weaker section locality. On 11.5.1987 her mother was not at home and she had gone to Malegaon to see her son who was injured in an accident and was admitted in the hospital. The deceased was Kasar by caste and the accused was of different caste. The deceased was married with Abhiman - son of the present accused, and it was not liked by the accused and her other relations. Therefore, it is the case of the prosecution that on 11.5.1987 all the four accused wanted to teach her lesson. At that time, Abhiman was not at home. All the four accused went where deceased was residing, they beat her with slaps and broom, then one of the acquitted accused Sulabai poured the kerosene on the saree of the deceased and the present accused lighted the match

stick and set her on fire.

4. Thereafter, victim Babybai rushed outside the house, jumped into the pond and tried to extinguish the fire, one person supplied blanket to her. One witness Balu gave her one rupee for going to Malegaon. She accordingly went to Malegaon. She went to the Hospital i.e. Wadia Hospital where Dr. Ahire got her admitted in the hospital. A message was sent to Taluka Hospital Malegaon, about the burning case. Then Dr. Ahire examined her at 12.30 p.m. He found Babybai had 87% burns but she was conscious. He recorded the history as given by victim Babybai herself. Then letter was sent to the Special Executive Magistrate Mr. Kasar, to record the dying declaration of Babybai. Accordingly, he recorded statement. Before the statement was so recorded, the Medical Officer examined Babybai and found that she was fit to make a statement. Then P.S.O. Bhadange recorded FIR of Babybai in the hospital. Offence was registered. Investigation was carried out. Panchnama of the scene of the offence was made, seizure of incriminating articles was done and the accused were arrested. In the meantime Babybai’s mother visited Wadia Hospital

where she narrated the incident to her. On 13.5.1987 Babybai expired in the Wadia Hospital.

5. According to the prosecution in the case history given by Babybai to Dr. Ahire, in the dying declaration, FIR, and the statement which Babybai made to her mother she has disclosed that it was this present accused who lighted a match stick after other accused poured kerosene upon her. Defence of the accused was of total denial. The trial court found that the case was proved by the prosecution against the accused No.1 i.e. the present accused only. Therefore, the trial court convicted the present accused i.e. accused No.1, as stated above, and acquitted other accused. Hence, this Appeal.

6. A perusal of the judgment of the trial court shows that the important witnesses Mahadu and Balu, turned hostile, but the accused came to be convicted on the basis of the case history recorded by Dr. Ahire, the dying declaration recorded by SEM, FIR recorded by the constable, and, statement of the mother of Babybai. Since the evidence that has been discarded, as stated above, does not help the prosecution, the only thing remains to be seen is

whether the aforesaid pieces of evidence were rightly accepted by the trial court for convicting original accused No. 1 i.e. present accused. There is no dispute that the deceased died as a result of burn injuries to the extent of 87%. Since the defence of the accused was of total denial and there was nothing brought on record to show that Babybai had any reason to commit suicide. That aspect of the matter has to be discarded. It was also not the defence of the accused that she sustained burn injuries due to any accident. Therefore, the only question is whether she died homicidal death and that has to be decided on the basis of the evidence tendered by the prosecution in the form of evidence of Dr. Ahire, SEM and Police Constable, who recorded FIR.

7. Learned APP pointed out that the evidence of Dr. Ahire is unimpeachable. Admittedly, he had no reason to record false case history. To the contrary, it has come on the record that when Babybai went to the hospital, nobody accompanied her. Therefore, there was no opportunity for anybody to tutor Babybai. So whatever case history was given by Babybai was given on her own will, and

Dr. Ahire had no reason to record the false case history. Dr. Ahire, was examined by prosecution as P.W. 6. He has stated that Babybai gave history that she was burnt by her mother in law and two other relatives. He also stated that she was admitted in the hospital on 11.5.1987 at 12.30 p.m. with 87% burn and she died in the hospital on 13.5.1987 at 7.30 a.m. He has also carried out post-mortem. In the cross examination he admitted that generally history is given by the patient and therefore he did not specifically mention that in that particular case the history was given by the patient herself. Apart form this, there is nothing in the cross examination to create doubt about the veracity of this witness.

8. The second important witness is P.W. 7 - SEM Manohar A. Kasar. He has stated as to how he was intimated by the police to come to the hospital for recording dying declaration of Babybai. Then he went to the hospital. She was alone there, he recorded her statement after Dr. Ahire examined her and found to be fit to give statement. It is at Exhibit 27. Then he stated that Babybai told him "her mother in law Reshambai, Leelabai, Sulibai and

Kevalbai beat her, Sulibai poured kerosene on her clothes and Reshambai - the present accused lighted match stick and set her on fire", and in that condition she rushed to the pond and then came to the hospital.

9. The evidence of this witness was challenged in the cross examination on the ground that he was also Kasar by caste and that he had nothing to show that after 1986 he continued as a Special Executive Magistrate and that he has also identified the body when it was sent for post mortem.

10. We do not find any substance in any of the grounds, stated above. He was resident of Malegaon and in 1987 it could be possible that caste of this witness and Babybai was same but that could not be a motive for him to record false dying declaration. No enmity of this witness with the accused is shown in any manner in the cross examination. Therefore, there are no reasons to disbelieve this witness.

11. Third witness is (P.S.O. Taluka Police Station, Malegaon) Laxman B. Bhadange, P.W. 8 he stated that on 11.5.1987 he was working as PSO,

Taluka Police Station, Malegaon. After receiving phone message that Babybai was admitted to hospital due to burns, he handed over charge to the Head Constable and from there he has issued Memo to the Special Executive Magistrate. In his presence, SEM Mr. Kasar came there and recorded the dying declaration, in his absence. Then thereafter he recorded statement of Babybai at about 4 p.m. she was in a position to speak and she affixed her thumb mark on FIR Ex. 29. Thereafter he went to the police station, registered offence at that time under Sections 451 and 307. In cross examination the defence has not succeeded in creating doubt about the veracity of this witness. No motive is attributed to him why he will falsely implicate the present accused.

12. From the aforesaid evidence, it is clear that the three important witnesses of the prosecution could not be shaken from their stand in the cross examination, and, it is this evidence, which is relied upon by the trial court for convicting the accused. There is no error on the part of the trial court in basing conviction upon this vital pieces of evidence, even though other

supporting witnesses turned hostile. There is therefore no reason to interfere with the judgment of the conviction. We therefore, pass the following order :

ORDER

. Appeal is dismissed.

. The Appellant is on bail. Appellant - Accused to surrender before the trial court within four weeks from today.

(D.G. DESHPANDE, J.)

(V.K. TAHILRAMANI, J.)